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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,435	06/26/2002	Frank Uhlik	15353	9151
7590	12/28/2005		EXAMINER	
Frank S DiGiglio Scully Scott Murphy & Presser 400 Garden City Plaza Garden City, NY 11530			TRAN LIEN, THUY	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 12/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/088,435	UHLIK, FRANK	
	Examiner	Art Unit	
	Lien T. Tran	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3/MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 10/11/05.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,3-45,66,68-70 and 72-115 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 66 and 72-115 is/are allowed.
- 6) Claim(s) 1,3-41,43-45 and 70 is/are rejected.
- 7) Claim(s) 42,68 and 69 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

The indicated allowability is withdrawn in view of the newly discovered reference(s) to Lee. Rejections based on the newly cited reference(s) follow.

The 112 first paragraph rejection of claims 43 and 112 is hereby withdrawn.

Claims 1, 3-41,43,44-45 and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee.

Lee discloses a method of producing a food product by mixing a shaped food pieces with other food ingredient to form a mixture and processing the mixture to form the food product. The food pieces are obtained by heating a mixture comprising 15-65% protein, 15-65% starch, 0-9% fat and water in an extruder to form shaped pieces. The starch used can be corn starch and the protein used can be selected from the ones disclosed in table 1. Examples of fat sources include tallow, soy oil, corn oil, vegetable oil etc. The pressure during extrusion is sufficiently high to allow for some expansion of the mixture after the pressure is released. The pieces are dried after extrusion and are placed in cans of pet food along with other components such as meat pieces and gravy. The cans are sealed and retorted to form the food product. The amount of water can be 33% as shown in example 3. (see col. 3 lines 29-60, table 1, col. 8 lines 10-15 and the examples)

Lee does not disclose the shape food piece is the gluten substitute food ingredients, the amount of gluten in the starch as in claim 5, the use of tapioca starch, the amount of protein as in claims 21-22, grinding the ingredient and the temperature as in claims 38-41.

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The food pieces disclosed by Lee contain the same ingredients and are heated in the claimed method. Thus, it would have been obvious to use the food pieces as gluten substitute when desiring to make food product having low or no gluten content. Since the amounts of starch, protein and fat fall within the ranges claimed, it is obvious the ratios of the components also fall within the ranges claimed. It would have been obvious to use other starch depending on the taste, texture and economic factors. Some starches cost more than other but provide better taste and flavor. It would have been obvious to use less protein depending on the protein content wanted for the product. Applicant has not shown any unexpected result with respect to the claimed amount. It would have been obvious to vary the temperature depending on the degree of cook and the time of cooking. For example, it would have been obvious to use higher temperature for shorter time. It would have been obvious to grind the food pieces when desiring to make a puree product .

Claims 42, 68 and 69 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. There is no suggestion in Lee to heat the mixture by microwave energy to make a bakery product using the food pieces.

Claims 66,72-115 are free of prior art because Lee does not disclose and suggest making a bakery product by mixing the food pieces with a gluten-free starch and water to form a dough.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

December 23, 2005

Lien Tran
LIEN TRAN
PRIMARY EXAMINER
Group 1707